

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 1204 of 1992

with

CRIMINAL APPEAL No 27 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT and  
MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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ANIL AMRUTRAO JALTE

Versus

STATE OF GUJARAT

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Appearance:

1. Criminal Appeal No. 1204 of 1992  
MR NITIN M AMIN for Petitioners  
PUBLIC PROSECUTOR for Respondent No. 1
2. Criminal Appeal No 27 of 1993  
MR NITIN M AMIN for Petitioners  
PUBLIC PROSECUTOR for Respondent No. 1

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CORAM : MR.JUSTICE J.N.BHATT and  
MR.JUSTICE A.K.TRIVEDI

Date of decision: 03/08/98

ORAL (COMMON) JUDGEMENT

(PER BHATT,J)

1. Since both these appeals arise out of common judgment they are being disposed of also by this common judgment. Criminal Appeal No.1204/92 is at the instance of original accused Nos 1, 2 & 3 whereas Criminal Appeal No.29/93 is at the instance of original accused No.4 of Sessions Case No.119/92 which are hereinafter referred to as accused persons 1 to 4 respectively for the sake of convenience and brevity.

2. The accused persons by filing these two appeals under section 374 Cr.P.C., 1973(Code) have assailed the judgment of conviction and sentence recorded by the Addl.City Sessions Judge in Sessions Case No.119.92 passed on 4.8.93 whereby accused persons came to be convicted and sentenced for having committed offence punishable under section 302 read with section 34 IPC and resultant sentence of life imprisonment for having committed murder of one Satish Mohanlal and also under section 323 of IPC and section 135(1) of Bombay Police Act read with section 34 but no separate order of sentence is recorded.

3. Few relevant material facts may be narrated at this stage. On 27.1.1992 at about 4.00 p.m. incident occurred near the house of Arvin Jayantilal in Naroda "C" colony in Ahmedabad. As per prosecution case the accused persons formed a common intention to commit murder any and every person whoever will intervene in saving the complainant-Arvin Jayantilal. In pursuance of said common intention accused No.1-Anil inflicted a blow on the left waist portion of the deceased-Satish with the help of iron pipe. Accused No.4-Tinu @ Vinu inflicted pipe blow on the head of deceased-Satish whereas accused No.3-Manojkumar @ Manubhai gave a stick blow hand of the deceased-Satish and accused No.2-Sanjay pelted stones which hurt the deceased on the neck portion. It was therefore alleged by the prosecution that the accused persons either in pursuance of common intention or by abatement with each other and committed murder of Satish and were guilty of offence punishable under section 302 read with section 34 of IPC and section 302 read with section 140 of IPC.

4. It was also the case of prosecution that accused No.3-Manojkumar inflicted stick blow on the person of

Dinesh, accused Noi.2-Sanjay gave fist blows to Arvin Jayantilal and threw stone on Jayantilal which hurt him on his back. Therefore, the accused persons were also charged for having committed offence punishable under section 323 read with section 34 or in the alternative under section 323 read with section 114 IPC. It was also the case of the prosecution that individually accused No.4-Tinu @ Vinu was responsible for committing murder of Satish by inflicting Iron pipe blow on the head of deceased Satish and thereby had committed offence punishable under section 302 whereas accused No.2-Sanjay had caused voluntary hurt to Arvin Jayantilal and therefore he was also responsible for punishment under section 323 IPC. Accused No.1-Anil, accused No.3-Manoj and accused No.4-Vinu were also charged for having committed offence punishable under section 135(1) of Bombay Police Act for committing breach of Notification of the Ahmedabad Police Commissioner, dated 27.12.1991 published in the newspaper under section 37(1) of the Bombay Police Act, 1951.

5. In order to substantiate the charges against the accused persons the prosecution had relied on the following 16 PWs:

1. Ashwinkumar R.Rajpura,
2. Dilipbhai M.Solanki
3. Rameshchandra B.Shah,
4. Jayantilal B.Sojitra,
5. Mansukhbhai Tarabhai,
6. Tinubhai J.Gohil,
7. Vinayakrav V.Patil,
8. Ashwin J.Sinhgarh,
9. Harish G.Singhal,
10. Bela T.Patel,
11. Natvarbhai P.Patel,
12. Mahendrabhai H.Pandya,
13. Bhanuprasad @ Dinesh P.Makwana ,
14. Jehaji Dahyaji,
15. Maldev V.Parmar,
16. Govind J.Chaudhary

6. Prosecution also placed reliance on the documentary evidence to which reference will be made by us as and when required at an appropriate stage. The accused persons have not led any defence, however, they have relied on the documentary evidence produced at Exh.57 to 59 at their instance. They are the medical case papers regarding medical treatment given to deceased-Satish in civil hospital.

7. Upon examination and evaluation of evidence and after hearing the Ld.APP and the advocate appearing for the defence, the trial court found that the accused persons are guilty of the offence punishable under section 302 read with section 34 IPC for committing murder of Satish Mohanlal. The trial court also found that accused No.4--Vinu @ Tinu individually guilty for his act of giving pipe blow on the head of the deceased-Satish and convicted him for the offence punishable under section 302 over and above the conviction of accused persons under section 302 read with section 34 of IPC. The accused persons are also held guilty for the offence punishable under section 323 IPC and also under section 135(1) of Bombay Police Act. All the accused persons came to be sentenced for Rigorous Imprisonment for life. No separate sentence was awarded for the offence under section 323 IPC and 135(1) of Bombay Police Act, 1951.

8. We have extensively heard the learned advocates--M/s Nitin Amin and K.G.Sheth and the Ld.APP--Mr.K.P.Raval and we have also dispassionately gone through the entire testimonial and documentary evidence relied on by the parties. In our opinion, the impugned judgment and order of conviction and sentence for the offence punishable under section 302 read with section 34 IPC is not sustainable. The prosecution has not been able to show that there was common intention to kill every and anybody whosever intervene or intercept in saving the life of Arvin Jayantilal. Such an unusual, bold and vague allegation of prosecution must be spelt out from the surrounding circumstances. The Ld.APP has not been able to satisfy us that there are circumstances which would lead us to any inference on such common intention on the part of the accused persons. Unfortunately, the Ld.trial judge has also not seriously considered this aspect. We have therefore no hesitation in finding that the prosecution has not been able to prove the common intention as alleged.

9. Prosecution has placed reliance on the following three eye-witnesses:

- (i) PW 8-Arvin Jayantilal-complainant-Exh.38,
- (ii) PW 9-Harish Chandulal-Exh.39--cousin of the complainant,
- (iii) PW 13-Dinesh Punjabhai Makwana-Exh.49--student of FYBA of S.V.Arts College.

10. The PW 8-Arvin Jayantilal-complainant has stated in his evidence that the accused No.1-Anil inflicted pipe

blow on the person of PW13-Dinesh whereas PW 9-Harish has stated in his evidence that the accused No.1-Anil inflicted blow with iron pipe on the left hand side portion of Satish when he intervened for saving Arvin Jayantilal. Evidence of Harish on this point is supported by PW 13-Dinesh.

11. In so far as the role of accused No.2 is concerned it is stated by all the three eye witnesses that he was not armed with any weapon. He had thrown a stone on the back portion of Arvin Jayantilal and also at Satish which hit him on the neck portion.

12. All the three eye witnesses have stated that the accused No.3-Manoj @ Manu was armed with stick and while he was trying to inflict a stick blow on the person of Jayantilal it landed on the person of Satish. He had also given stick blow on PW 13 who tried to intervene. Second blow was also given to him on the left waist portion. Prosecution is therefore that the accused No.3-Manoj had only inflicted stick blows.

13. In so far as accused No.4-Vinu @ Tinu is concerned, it is consistent case of the prosecution that he was armed with Iron pipe produced at Article 4 and while attempting to give a blow on the person of Jayantilal, Harish intervened and the blow landed on his left waist portion.

14. PSW9-Harish Chandulal and PW 3-Dinesh have consistently testified that the stick blow was given by Vinu @ Tinu on the head portion of Satish. Said blow given on the head ultimately proved fatal.

15. The autopsy was conducted by PW7--Dr.V.V.Patil who was examined at Exh.28. The postmortem report is produced at Exh.29. According to medical evidence of Dr.Patil and as per the postmortem report the deceased had sustained as many as 7 injuries out of which one was serious and inflicted on the head. The remaining injuries were simple. The injury sustained by the deceased on his head was corresponding to external injury as per Column 19 of the Postmortem report which was sufficient in ordinary course of nature to cause death and all the injuries were antemortem as per medical evidence and external injury corresponding to internal injury enumerated in Column 19 of the Postmortem report-Exh.29 was sufficient in ordinary course of nature to cause death which proved fatal and it was possible by Iron pipe like muddamal article 14. Prosecution has successfully proved that the aforesaid fatal injury was

given by accused No.4-Vinu @ Tinu who used muddamal article-Iron pipe and other accused persons have given simple injuries to the deceased-Satish as well as injured witnesses. In this connection the prosecution has relied on the decision of the Honourable Supreme Court in the case of Gurmailsingh & Ors vs State of Punjab reported in AIR 1982 SC 1466.

16. It is settled proposition of law that ordinarily the evidence of injured eye witness cold not be discredited and/or discarded unless it is successfully felt out from the record that such testimonies are totally unreliable and untrustworthy. We have no hesitation in holding the original accused Nol.4-Vinu Tinu the appellant in criminal appeal No.27/93 had given fatal blow with the help of muddamal article 4-Iron Pipe on the head of deceased-Satish which culminated into his death. The question, which now, is required to be considered is as to whether the conviction and sentence recorded by the trial court for offences punishable under section 302 read with Section 34 is sustainable or not. Firstly, it may be mentioned that the prosecution has not been able to successfully establish that there was common intention as alleged by the prosecution. Therefore, there is no question of vicarious liability with the help of section 34 IPC. In so far as the death of deceased-Satish Mohanlal is concerned, only accused No.4 had given blow with Iron pipe-article 4 on his head which resulted into his death. It could not be said to have been done out of common intention as no such common intention is proved. There is also no evidence on the record to show that the accused Nos 1, 2 and 3 had committed abatement. So, the alternative case of the prosecution for offence committed by accused No.4 was abated by accused Nos 1, 2 & 3 is also not proved beyond reasonable doubt.

17. Under these circumstances, the accused persons are liable for individual acts for commission of offences. Insofar as accused No.1 is concerned he had used iron pipe and had given blow which proved to be simple injury . Therefore, accused No.1 only could be held guilty for offence punishable under section 324 of IPC. Section 324 prescribes punishment for voluntarily causing hurt by dangerous weapons and offender can be punished with imprisonment of either description for a term which may extend for 3 years or with fine or with both. Accused No.1 has undergone the punishment for more

than 6 years. Maximum punishment prescribed is of 3 years. Accused No.1 has to undergo maximum sentence for offence punishable under section 324 for three years. Whereas he has undergone as such almost double the period of maximum punishment. Therefore, he is required to be set at liberty forthwith.

18. Accused No.2, brother of accused No.1 is also found guilty for the offence punishable under section 323 as he had pelted stone and caused voluntary hurt. He has also undergone more than 3 and 1/2 years punishment. Maximum punishment for offence under section 323 is one year or fine or with both. Accused No.2 is therefore convicted and sentenced for offence punishable under section 323 for maximum period of one year. Sentence he has already completed that period he shall be set at liberty forthwith. Since he has already granted bail and he has completed the maximum period sentenced by us his bail bond therefore shall stand cancelled.

19. Accused No.3 is found to have given stick blows and inflicted injury, therefore, he is convicted and sentenced for the offence punishable under section 324 IPC to undergo Rigorous Imprisonemtn for three years. He has already undergone more than that period. Therefore he shall be set at liberty forthwith.

20. Now the important question which falls for our consideration at this juncture is with regard to culpability of accused No.4. The evidence unequivocally discloses that the accused No.4 was armed with iron pipe and inflicted blow on the head of deceased. It is also amply clear from the evidence on record there was no intention to commit murder of deceased. Alleged common intention has not been proved to the hilt. In such circumstances, it can not be said that the offence committed by him is culpable homicide amounting to murder. In order to bring the case within para 3 of section 300 IPC it ought to be established that there was a common intention to inflict particular bodily injury which in the ordinary course of nature was sufficient to cause death. It is noticed by us in the course of evaluation of evidence of prosecution that the accused No.4 though armed with iron pipe had no intention to commit murder of deceased. In fact, the intention was to inflict pipe blow on the complaint the deceased became victim of the assault when he tried to intervene in the assault in saving the pipe blow being inflicted upon the Jayantilal. In that process Iron pipe held by the accused No.4 unknowingly landed on the head of the deceased. It could also be safely concluded that he did

not have intention to cause particular type of injury on the person of deceased. No doubt, the injury caused by him on the head of deceased is found to be sufficient in ordinary course of nature to cause death. What ought to be found is that the injury found to be the injury that was intended to be inflicted, no such evidence is led. Any such circumstances are spelt out. Therefore, the culpability and the criminality committed by the accused No.4 could be at the best punishable under section 304 Part II. As he had committed culpable homicide not amounting to murder in case of death of deceased. He is therefore required to be convicted and sentenced for the offence punishable under section 304 Part II for Rigorous Imprisonment of 6 years. We are informed that he has already undergone more than six years period and therefore he is also required to be set at liberty forthwith.

21. In the result the impugned judgment and order recorded by the Ld.ADDL.City Sessions Judge in Sessions Case No.119/921 holding all the accused persons guilty for offence punishable under section 302 read with section 34 is quashed and accused persons are acquitted of the said charges against them.

22. Accused Nos 1,2,3 & 4 therefore are held individually liable for their individual act as stated by us hereinabove. Both the appeals are partly allowed.

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